

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW PERRONG,

Plaintiff,

v.

MACY’S INC., DEPARTMENT STORES
NATIONAL BANK, FDS BANK, and
MACY’S CREDIT AND CUSTOMER
SERVICES, INC.,

Defendants.

CIVIL ACTION NO. 18-1382

**DEFENDANT’S MOTION TO DISMISS COMPLAINT OR STRIKE
PLAINTIFF’S CLASS CLAIMS FROM THE COMPLAINT**

Defendant Department Stores National Bank (“DSNB”), wrongly identified as Macy’s Inc., Department Stores National Bank, FDS Bank, and Macy’s Credit and Customer Services, Inc., through its undersigned counsel and pursuant to Federal Rules of Civil Procedure (“Rule”) 12(b)(1), 12(b)(6), and 12(f) hereby moves to dismiss the Complaint filed by Plaintiff Andrew Perrong (“Perrong”), or alternatively, to strike the class claims from Plaintiff’s Complaint.

Perrong alleges that DSNB violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, by calling a phone number to collect a debt owned by another person. This is Perrong’s tenth TCPA suit in this judicial district in the last fourteen months. In these suits he has claimed ownership of at least eight different phone numbers. He is a professional plaintiff. Thus, Perrong lacks the injury-in-fact required for Article III standing and also lacks Constitutional and prudential standing, and his Complaint should be dismissed with prejudice.

Alternatively, Perrong's attempt to advance this suit as a class action is fundamentally flawed. The Complaint alleges an impermissible fail-safe class without any facts to support class allegations and individualized issues render class treatment inappropriate.

For these reasons, discussed in more detail in the accompanying Memorandum of Law, DSNB respectfully requests that the Complaint be dismissed or, in the alternative, that the Court strike the class allegations.

Respectfully submitted,

/s/ Daniel JT McKenna

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